No. 806, 81

FILED
JUL 11 1898
JAMES H. McKENNEY,
CLERK

Motion to advance.

No. 306

Filed July 11, 1898.

IN THE SUPREME COURT OF THE UNITED STATES.

WASHINGTON, D. C.

OCTOBER TERM, 1898.

THE HOUSTON & TEXAS CENTRAL RAILROAD COMPANY, C. P. HUNTINGTON, SAM ALLEN, THOS. H. HUBBARD, WM. D. CLEVELAND, AND C. LOMBARDI, PLAINTIFFS IN ERROR,

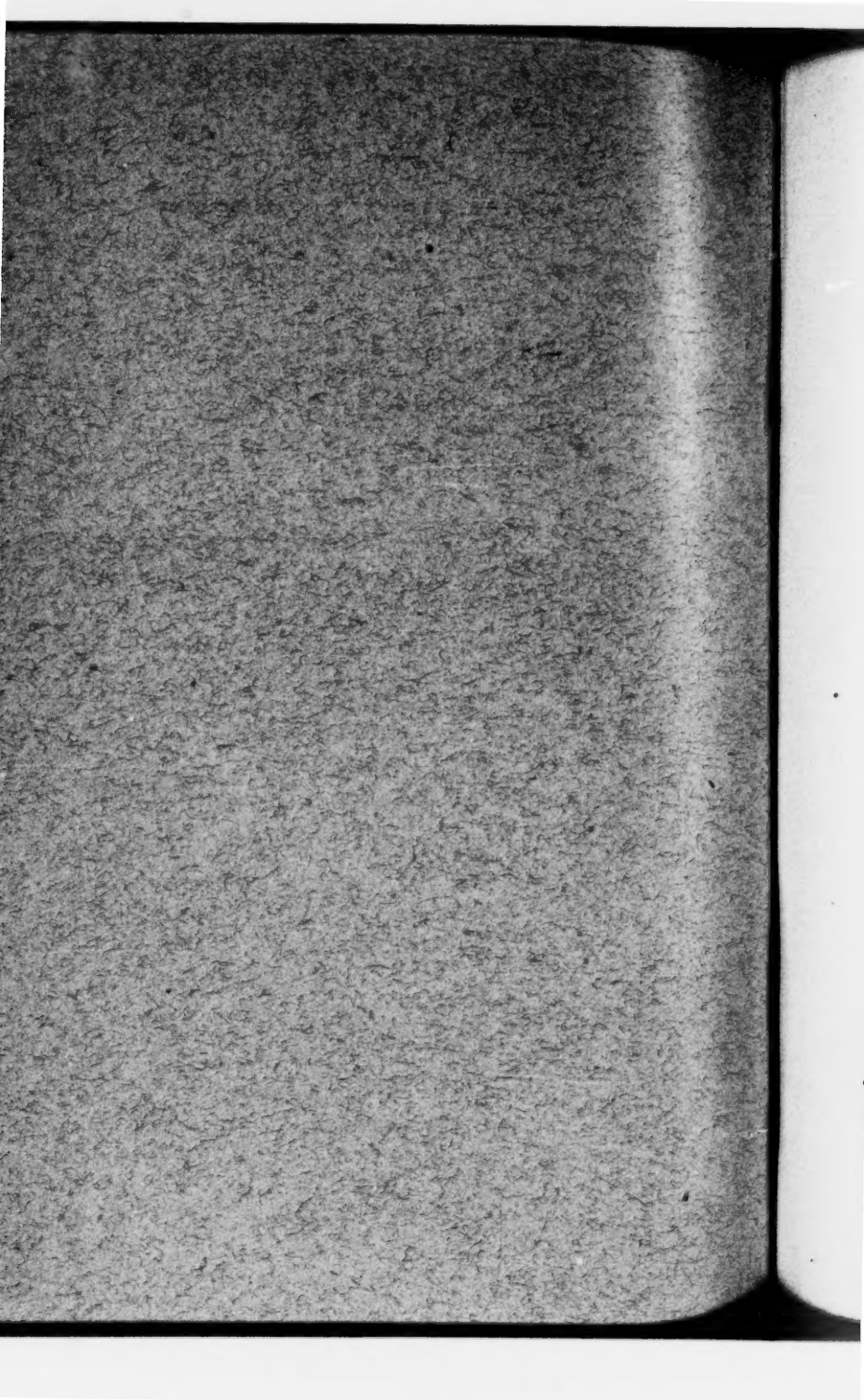
vs.

THE STATE OF TEXAS, DEFENDANT IN ERROR.

IN ERROR TO THE COURT OF CIVIL APPEALS FOR THE THIRD SUPREME JUDICIAL DISTRICT OF THE STATE OF TEXAS.

MOTION TO ADVANCE.

EUGENE VON BOECKMANN PUB. CO., PRINTERS, AUSTIN, TEXAS.



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To the Honorable, the Supreme Court of the United States:

This was a suit instituted in the State trial court by the State of Texas, as plaintiff, against the Houston & Texas Central Railroad Company, as defendant, for debt and foreclosure of lien on the property of the defendant, which resulted in a judgment in favor of the State of Texas and against the said Houston & Texas Central Railroad Company for the sum of six hundred seventy-three thousand one hundred and nine

dollars and fifty-six cents ($673,109.56), the same being the amount of principal and interest then due. Also a decree of foreclosure of the lien and the sale of the portion of the defendant company's railroad therein described.

From this judgment, the plaintiff in error appealed to the Court of Civil Appeals for the Third Supreme Judicial District of the State of Texas. This appeal resulted in an affirmance of the judgment against the said railroad company and C. P. Huntington, Thos. H. Hubbard, Wm. D. Cleveland, Sam Allen and C. Lombardi, sureties on its appeal bond. The plaintiffs in error applied to the Supreme Court of the State for a writ of error for the purpose of having that court review the judgment of the Court of Civil Appeals. The Supreme Court of Texas denied the writ of error. A writ of error was then granted bringing the cause to this court, assigning several errors herein, and a bond given superseding the judgment of the court below. The assignments, though in various forms, raise but two federal questions:

First, that the trial court erred in not removing the cause to the United States Circuit Court for the Western District of Texas.

Second, that the judgment involved a construction of the Constitution and laws of the United States which were decided adversely to the plaintiffs in error.

Neither of these contentions is well founded. The statement of plaintiff's cause of action was, in substance and effect, that it was a suit for a debt evidenced by written obligations in the form of bonds, evidencing a loan of the special school fund of Texas to the railroad companies therein named, and the existence of a lien on the companies' property, foreclosure of which was asked. (Tennesse vs. Bank, 152 U. S. 455-464.) The defence of the plaintiff in error company was that it had paid the debt for which this suit was brought, in treasury warrants of the State of Texas. The Court of Civil Appeals held in affirming the judgment of the court below that the warrants in which these payments were made were issued for the purpose of being circulated as money, and were therefore void be-

cause prohibited by the Constitution of the State of Texas. The language of the Court of Appeals on that subject is as follows:

"The second and principal question which arises is whether the payments made by the railway companies in State treasury warrants are valid and binding upon the State. This question presents really the only controversy between the parties. Section 8, Article VII, of the Constitution of 1845, states that in no case shall the Legislature have power to issue treasury warrants, treasury notes, or paper of any description intended to circulate as money. The warrants which were paid upon the obligations due the State were issued under acts of the Legislature of the State when that provision of the Constitution was in force. The various acts of the Legislature of the State during the period of the war concerning the State revenues, its indebtedness and liabilities, and providing for the issuance of State warrants and the purpose for which they could be used, and the amount for which they could be issued, together with the size, shape and color of the warrants issued, and the small amounts in which the warrants were issued, together with the history of the times and the well-known depleted condition of the State treasury during that period, together with the scarcity of existing, reliable and available circulating medium as money, convinces us that it was the purpose of the various acts of the Legislature during that time to give to the warrants issued during that period, as much as possible a standing and character as money. The scarcity of money and the necessities of the State and the public were evidently inducements to the Legislature sitting during this period to provide uses to which warrants might be put in the way of requiring State officers and authorizing railways to receive them in payment of debts due them. The evident purpose was to give to the warrants in certain instances a debt-paying power in order that they might be given an advanced value and could be used in some respects as money. When the warrants were issued it was not expected and intended that they would be immediately paid, for the State was not then in financial condition to pay them; nor was the intention solely that they should serve the legal purpose of evidence of debt against the State. But the character of the legislation during the period of the war clearly indicates that the purpose was to give to these warrants the added quality of money as far as it lay in the power of the Legislature to accomplish that result. To set out all the acts of the Legislature bearing upon this subject, together with all the facts which we have considered in connection therewith, with the well-known matters of history relating thereto, would unnecessarily prolong this opinion. Therefore, we close this branch of the case with the statement that in our opinion the warrants of the State issued

during the period of the war, after January 1, 1862, were intended to be used and circulated as money, and in this connection it is well to say that we are of the opinion from all that is shown by the record, together with the various acts of the Legislatures during that time, that the payments made in warrants by the railway companies upon the obligations sued upon were in warrants issued after the time we have declared they were intended to circulate as money. What is said in this connection relieves us from passing upon the interesting questions presented in the briefs upon the burden of proof with reference to the alleged payments." (Houston & Texas Central Railroad Company vs. State of Texas, 41 Southwestern Reporter, 157.)

This ground being broad enough upon which to rest a judgment, a decision of the federal question involved became immaiteral. Egan vs. Hart, 165 U. S. 188-191.

The State of Texas, defendant in error, therefore, moves this court to advance this cause upon the docket of the court, and set same down for hearing for as early a date as the convenience of this court will permit. And in this connection, plaintiff in error would respectfully suggest that the cause be set for some date not later than December 1st, 1898:—

1. Because the State of Texas is a party to the suit.

2. Because the supersedeas bond practically enjoins the State from collecting its school fund necessary for the operation of its schools.

3. Because it is believed that this court has no jurisdiction of the case, and that the decision on this point should be given at the earliest possible date.

4. Because the case affects matters of general public interest to the people of Texas.

5. Because it is one of special and peculiar circumstances, such as to justify its advance under the rules of this court.

Defendant in error would further show that R. S. Lovett, Esq., and Jas. A. Baker, Esq., of Houston, Harris County, Texas, and Joseph Paxton Blair, of the City of New Orleans, in the State of Louisiana, are counsel for plaintiffs in error, upon whom service hereof is asked to be made.

M. M. Brown ..... Att'y Gen'l,

Attorney for the State of Texas, Defendant in Error.

Issuance and service of notice hereof is hereby waived by plaintiffs in error and it is agreed that this memorandum may be accepted as a substitute therefor.

Joseph Paxton Blair

Jas. A. Baker

Robert. S. Lovett

Attorneys for plaintiff in error.